THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No: 17116 of 1996

Date: 16.02.2006

Between:

Kazamounuddin, S/I Mohd. Khaza, age: 35 yeas and four others.

… Petitioners.

And

Praga Tools Limited, rep.,by its, General Manager, Secunderabad.

… Respondent.

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No: 17116 of 1996

ORDER:

Petitioners, five in number, seek regularization of their services from the date of their first appointment with all consequential benefits.

2. Facts, to the extent necessary, are that the first petitioner is working as a Welder-cum Fitter and the other petitioners are working as Fitters in the respondent Corporation, a Government of India Public Sector undertaking. The petitioners were initially appointed in the respondent corporation on 13-12-1985, 09-09-1986, 20-01-1987, 31-01-1987 and 21-06-1987 respectively and were continued in service with intermittent breaks. Petitioners would submit that they have all passed I.T.I, have completed apprenticeship and are eligible for absorption, as permanent employees, in the respondent corporation. It is their grievance that, though they have been working for nearly two decades, they have not been absorbed in permanent posts and that the respondent is resorting to intermittent breaks in their services in order to deprive them of absorption in permanent posts. Petitioners contend that the respondent corporation is adopting a strange device of employing casual workers and in giving them breaks to provide overtime work for permanent workers. It is stated that the respondent employs around 2,300 workers in various trades, that workers are classified as “Permanent” and “Casual”, that there are about eight trades in the respondent corporation viz., (1) Fitter; (2) Turner; (3) Machinist; (4) Grinder; (5) Electrician; (6) Welder; (7) Blacksmith; and (8) Painter and that the corporation is employing about 140 casuals in various trades, who continue

to remain casual workers despite working in the corporation for nearly two decades. It is stated that while a permanent worker gets Rs.85/- to Rs.100/- per day including holidays, a casual worker is only given Rs.27/- per day for 25 days in a month, without payment for holidays, and that Provident Fund and E.S.I. contributions are also deducted from their wages. It is stated that the petitioners were appointed and retrenched 10 to 15 times since 1986.

3. In the year 1990, a dispute was raised and as a result the respondents entered into an agreement, before the Commissioner of Labour, to the effect that they would absorb casual workers on the basis of their seniority. Accordingly, in the month of February, 1991, about 60 casual workers are said to have been made permanent. It is stated that some of the workers, who were earlier employed on casual basis, filed W.P.No.4140 of 1992 seeking regularization of their services, since all of them had worked for more than five years. This court, by order in W.P.M.P.No.12906 of 1992, dated 08-09-1992, directed the respondent to take the petitioners into service whenever there was work on condition that the petitioners offer to serve the respondent corporation. It is stated that, pursuant to the interim orders of this court, these employees were taken back into service. W.P.No.13550 of 1993 was filed by Praga Tools Employees Union seeking regularization of the services of all casual workers. This court, by order in W.P.M.P.No.17157 of 1993, dated 16-09-1993, directed that *status quo* obtaining as on the date of the order, particularly with reference to the settlement dated 04-12-1990 entered into by the General Manager, Praga Tools Limited, shall continue with regard to retrenchment of the casual workers, shown in the annexure to the writ petition, pending further orders. As a result all the casual workers, in the said annexure, were continued in service. It is stated that the names of the petitioners herein were also shown in the annexure at serial numbers 1, 2, 3, 6 and 48 respectively. However, the petitioners could not get the benefit of the orders since they were already retrenched in the month of April 1993. Two or three weeks thereafter, the respondents took the petitioners back into service, continued them for some time and again resorted to retrenchment. This happened on two or three occasions. Again on 21-07-1996, the services of the petitioners' were retrenched and they were taken back into service three weeks thereafter on 16-08-1996. Since the petitioners could not avail the benefit of the order in W.P.M.P.No.17157 of 1993, dated 16-09-

1993, the respondent was threatening to retrench them from service again. As the petitioners in W.P.No.4140 of 1992 were juniors to them and were being continued, as some of the casual workers, shown in the annexure to W.P.No.13550 of 1993, who though juniors to the petitioners, were being continued by virtue of the interim direction of this court dated 16-09-1993, and as most of the workers, who were originally appointed later to them, were being continued in service, and there was every danger that they would be retrenched from service, the petitioners approached this Court by way of the present writ petition. This court, in W.P.M.P.No.21058 of 1996, dated 21-08-1996, passed interim orders that if the petitioners were in service as on the date of the order, they shall be continued in service until further orders.

4. In the Additional affidavit, the service particulars of the petitioners are mentioned. It is stated therein that the respondent corporation had regularized the services of several juniors whose details are given therein. It is stated that these 14 persons, juniors to the petitioners, have been absorbed into service with effect from 14-02-1990 under the Artisan scheme and that their services were regularized with effect from 14-02-1991. It is contended that the action, of the management of the respondent company, was arbitrary and discriminatory and that it constituted 'unfair labour practice' under schedule V of the Industrial Disputes Act, 1947. Petitioners contend that they are entitled to be regularized in service with effect from the date their juniors were regularized.

5. A counter affidavit is filed by the respondent, both to the affidavit and the additional affidavit filed on the behalf of the petitioners. It is stated therein that the petitioners were engaged purely on a casual basis depending upon exigencies of work, that they were not entitled to the benefits and privileges that were enjoyed by regular and permanent workers, that casual workers are generally engaged depending upon exigencies of work in the establishment, that the work of casual workers commences daily in the morning when such casual workers are engaged and ends in the evening when the day's work is over and that there is no continuity in the work of a casual labourer. It is contended that there was no obligation on the part of casual labourers to offer themselves for work daily at the factory and there was no obligation on the part of the respondent to provide them work daily. Insofar as appointing regular and permanent workmen is concerned, respondents contend that they are to be

recruited in accordance with the procedure prescribed i.e., either by advertisement in the News Papers or through Employment Exchange and that casual labourers cannot claim any right or lien over any employment or post. It is also stated that casual workers cannot seek permanency solely on the ground that they were engaged for a few days and that they were not entitled for preferential treatment in the matter of regular employment. It is stated that if such a claim were entertained, it would defeat the very object of regular appointment in accordance with law, that the Management, after due negotiations with the Union, has been entering into settlements with the recognized Union, from time to time, and has been absorbing casual labour depending upon its requirement of manpower. The settlements dated 25-09-1986, 6-12-1986, 10-03-1987 and 04-12-1990, wherein casual labourers were absorbed into regular service in their order of seniority, after completion of the training period, is referred to. It is contended that the said settlements are binding on the petitioners and if the petitioners have any grievance regarding the settlements, they can only seek relief under the provisions of the Industrial Disputes Act and that this court has no jurisdiction to adjudicate the issues involved in the present writ petition. It is stated that the earlier writ petitions were dismissed, by a common order, dated 30-11-1987, and it was held that the casual labourers should abide by the settlement signed by the management and the Union from time to time. It is also stated that the writ appeal filed against the said common order was also dismissed by order dated 16-06-1998. Respondents would contend that the corporation is going through a severe financial crisis for the last 15 years, is not in a position to meet its statutory and non-statutory liabilities and the huge amounts due and payable to various statutory bodies like ESI, PF, Excise and Sales Tax etc., and that the company is not even able to pay salaries and wages to its employees within time. Reference is made to the fact that a Voluntary Retirement Scheme was introduced and that the respondent reduced its manpower drastically from 2,500 to 545 employees. Reference is also made to the fact that the company was referred, as a sick company, under the Sick Industrial Companies (Special Provisions) Act, 1985 and that the scheme, for rehabilitation of the respondent company, is in operation. It is stated that the respondent has introduced various measures to reduce its overheads including discontinuance of various facilities to their employees and that there is not enough work for permanent

employees and any order to absorb the petitioners, into the regular service of the company, would further cripple the company, affecting the rehabilitation package under implementation. Respondent would contend that the company is not in a position to bear the financial burden any more. It is stated that pursuant to the demand of the recognized union to provide work to casual labourers, the respondent company provided them work on a rotation basis for a period of two months and when this rotation procedure was questioned in W.P.No.1978 of 1996, this court disposed of the writ petition on 08-02-1996 with a direction to follow the last come first go principle while engaging casual labour. Since then, casual labourers are being engaged on the basis of their seniority depending upon exigencies of work. With regards the contention, in the additional affidavit, it is stated that while regularizing, the seniority in the same trade is to be looked into and not the general seniority, that the senior most workmen in a general seniority list may not be eligible as regularization has to be made depending upon the requirement in a particular trade and it is only the senior most employee in that particular trade who is eligible for regularization. It is stated that most of the workmen, whose services were regularized, as mentioned in the additional affidavit, belong to different trades i.e., Turner-cum-Fitter, Fitter, draughtsman-cum-Fitter etc., and while the first petitioner is a Welder-cum-Fitter, the services of none of the Welders-cum-Fitters, juniors to the petitioners, were regularized. It is stated that all the other petitioners in the Fitter category are juniors to the persons mentioned in the additional affidavit under the Fitter category and that there is no truth in the allegation that juniors were regularized. It is stated that the respondent company is not able to bear any burden involving financial expenditure and any direction in this regard would only cripple the company.

6. In the reply affidavit, the petitioners would give details as to how a writ is maintainable against the respondent corporation and that it is an instrumentality of the State under Article 12 of the Constitution of India. Reference is made to the fact that a settlement, under Section 12(3) of the Industrial Disputes Act, was entered into on 04-12-1990 to continue the ‘Artisan Training Scheme’, to casual technicians and casual clerks working in the respondent company, which the management had introduced during 1989 and that, under the said

scheme, casual workers were being trained in multiple trades in order to meet the quality standards and impart the required skills to suit the job requirements of the company. It is stated that though the petitioners were given training, under the "Artisan training scheme', in other than their own trades (i.e., multi trades), they were ignored for regularization, whereas their juniors were regularized with effect from 14-02-1991. It is stated that though the first petitioner originally belonged to the 'Welder' trade, due to exigencies of company's requirements, he was imparted training in the 'Fitter' trade and since then was continued to be employed in 'Fitter' works only, and was therefore called Welder-cum-Fitter'. It is stated that the respondent corporation had absorbed Sri M.Mallaiah as a Fitter with effect from 14-02-1991, though he was designated as Turner-cum-Fitter. Subsequently, Sri M.Mallaiah was promoted as Grade II Fitter in the Quality Control Inspection works with effect from 01-07-2000. Reference is also made to one Y.Nagabushanam, who originally belonged to the draughtsman cadre but, due to exigencies of company's requirements, was imparted training in the 'Fitter' trade, and was called "Draftsman-cum-Fitter' whereas he was absorbed as a regular fitter with effect from 14-02-1991. It is stated that Y.Nagabushanam was also promoted as Grade II 'Fitter' with effect from 01-07-2000. It is stated that all the fitters, in the statement furnished in the additional affidavit, are juniors to the first petitioner in the multi trained trades and that one Mr.Chandra Sekhar Naidu, who was appointed in the respondent company on 26-07-1987 as a 'Casual Fitter' was automatically 'junior' to petitioners 2 to 5 as they not only belonged to the 'Fitter' trade but were also appointed prior to Mr.Chandra Sekhara Naidu. It is contended that the petitioners, though seniors, were arbitrarily ignored for regularization and that the action of the respondents in not regularising the services of the petitioners and regularizing the services of their juniors was illegal, arbitrary and discriminatory.

7. While a plea regarding maintainability of the writ petition was urged in the counter-affidavit, Ms. G. Sudha, learned Counsel for the respondents, rightly, did not press this contention, as the respondent corporation, a Government of India Public Sector Undertaking, is undoubtedly an instrumentality of the State under Article 12 of the Constitution of India.

8. The short question which requires examination is as to whether the

petitioners herein are entitled to seek regularization on the ground that their juniors have been so regularized. While the submission of Ms. G. Sudha, learned Counsel for the respondent, is that no employee has the right to seek regularization in a permanent post, it needs no reiteration that every employee has the right not to be discriminated against, to be regularized in service in accordance with the scheme framed in this regard by the Corporation, and to be treated on par with others similarly situated and whose services have been regularized under the scheme. The factual details in the tabular statement furnished by the petitioners, in their additional affidavit, is not in dispute. It is clear therefrom that while the first petitioner, a Welder-cum-Fitter, who was appointed on 13.12.1985, is senior to all the 14 workmen whose services were regularized, petitioner No.2 is senior to those at serial Nos.2 to 14, and petitioner Nos. 3, 4 and 5 are seniors to Sri Chandra Sekhar Naidu shown at Serial No. 14 of the tabular statement. Since these 14 workmen, regularized with effect from 14.02.1991, are juniors to the petitioners, there is no justification in denying the petitioners the benefit of regularization, under the Artisan scheme, with effect from 14.02.1991, on par with and the date on which the services of their juniors, amongst these 14 workmen, were regularized.

9. Ms. G. Sudha, learned Counsel for the respondent, would however contend that the first petitioner was not appointed originally as a Fitter and since he is a Welder-cum-Fitter, he is not entitled to contend that he is senior to the 14 workmen in the seniority list of Fitters. A perusal of the tabular statement, giving details of the 14 workmen, who were regularized on 14.02.1991, would show that Sri M. Mallaiah and Sri V. Narsaiah are both Turners-cum Fitters, while Sri Y. Nagabhushanam and Sri N. Ramakrishna, are Draughtsmen-cum-Fitters. If these four workmen were entitled to be regularized, treating them as Fitters, it does not stand to reason as to why the 1st petitioner, who despite being senior to all these 14 workmen, should be denied regularization of his services on the ground that he is a Welder-cum-Fitter. It is clear from the reply affidavit that, under the Artisan scheme, casual workers were imparted training in multiple trades and since the 1st petitioner, who belonged to the Welder trade, was imparted training in the Fitter trade and continues to be employed in “Fitter” works, he has been designated as a Welder-cum-Fitter. Petitioners 2 to 5 are all Fitters and since workmen juniors to them, in the Fitter trade, have

been regularized they are entitled to claim parity with such workmen, to be absorbed in service under the Artisan scheme and to be regularized with effect from 14.02.1991.

10. Ms. G. Sudha, learned Counsel for the respondent, would contend that availability of permanent vacancies is a pre-requisite for regularization of services.

11. In **State of Haryana Vs. Piara Singh** the Supreme Court held as under:

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Art. 309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. **Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularization**. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above……" (emphasis supplied)

12. The law laid down, by the Apex Court in **Piara Singh**[1], is that if a temporary appointment continues for a long time, there is a presumption that there is a need for a regular post and it is in such circumstances that the services of a temporary employee is directed, by Courts, to be regularized. In the present case, the very fact that the petitioners have been continued in service, *albeit* with certain breaks, for the past nearly two decades would give rise to the presumption of there being a need for regular posts, in which, their services are entitled to be regularised.

13. Ms. G. Sudha, learned Counsel for the respondents, would refer to a

statement and contend that the petitioners, and other employees similarly situated, were continued in service pursuant to interim orders passed earlier, in several writ petitions filed before this Court. This contention need not detain us. The 14 workmen whose services were regularized with effect from 14.02.1991, under the Artisan scheme, were juniors to the petitioners. The justification or otherwise of continuing the petitioners in service, pursuant to the interim orders of this Court is immaterial, since the respondents have regularized the services of employees juniors to the petitioners herein, under the Artisan scheme, which provides for regularization of services of workmen.

14. Ms. G. Sudha, learned Counsel for the respondents, would contend that the appointment of an employee would come into force only from the date of his regularisation and not anterior thereto and even if this Court was of the view that the petitioners are entitled to be regularized, they would be entitled for regularization only from the date of the order and not from an anterior date. I am afraid I cannot agree. The fact that the 14 workmen, whose details are furnished in the additional affidavit, were regularized in service with effect from 14.02.1991, under the Artisan scheme, is not in dispute. Regularising the services of the petitioners, from the date of the order of this Court, would result in their continuing to remain juniors to their erstwhile juniors, by more than a decade. It would, in effect, amount to condoning the illegal action of the respondents in not adhering to the well established principles of industrial/service jurisprudence that seniors are entitled to be considered for appointment in regular posts prior to their juniors. The petitioners are therefore entitled to be regularized in service with effect from the date their juniors were so regularized.

15. The next question, which calls for examination, is as to whether the petitioners are entitled for arrears of wages consequent upon the direction of this court that their services shall be regularized with effect from the date their juniors were regularized.

16. A perusal of the counter-affidavit, reveals the precarious financial position in which the respondent corporation is in. It is specifically stated in the counter affidavit, which remain uncontroverted in the reply affidavit, that the respondent

corporation has been going through a severe financial crisis for the last 15 years, is not in a position to meet its statutory and non-statutory liabilities and that it is not even able to pay salaries and wages to its employees within time. The counter affidavit also makes a reference to the fact that the respondent company was declared as a sick company under the Sick Industrial Companies (Special Provisions) Act, 1985, that it has been using various measures to reduce its over heads and that it is in no position to bear the financial burden any more. In view of the precarious financial position of the respondent corporation, I do not consider it appropriate to direct payment of arrears of wages to the petitioners.

17. The petitioners shall be regularized in service with effect from the date their juniors were regularized. They will not be entitled for arrears of wages. They shall, however, be given notional increments, on the basis of which they shall be placed in the appropriate scales of pay and paid salary accordingly. Petitioners shall be entitled for payment of salary/wages, in the appropriate scales of pay, only from the date of this order. It is also made clear that this order shall not preclude the respondents from reducing its surplus manpower in accordance with law.

18. The writ petition is accordingly disposed of. There shall however be no order as to costs.

Date: .02.2006.

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RAMESH RANGANATHAN, J

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